

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 CHAR SACHSON, State Bar No. 161032
Deputy Attorney General
4 455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
5 Telephone: (415) 703-5558
Facsimile: (415) 703-5480

6 Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2009-12

12 LISA MIYAKO NOGUCHI
5467 Fair Oaks Street
Pittsburgh, PA 15217
13 Registered Nurse License No. 561983
Nurse Midwife Certificate No. 1420
14 Nurse Midwife Furnisher Certificate No. 1420

ACCUSATION

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation
20 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,
21 Department of Consumer Affairs.

22 2. On or about January 20, 2000, the Board of Registered Nursing issued
23 Registered Nurse License Number 561983 to Lisa Miyako Noguchi (Respondent). The
24 Registered Nurse License expired on June 30, 2005, and has not been renewed.

25 3. On or about January 24, 2000, the Board of Registered Nursing issued
26 Nurse Midwife Certificate No. 1420 to Lisa Miyako Noguchi (Respondent). The Nurse Midwife
27 Certificate expired on June 30, 2005, and has not been renewed.

28 4. On or about June 12, 2000, the Board of Registered Nursing issued Nurse

1 Midwife Furnisher Certificate No. 1420 to Lisa Miyako Noguchi (Respondent). The Nurse
2 Midwife Furnisher Certificate expired on June 30, 2005, and has not been renewed.

3 JURISDICTION

4 5. This Accusation is brought before the Board of Registered Nursing
5 (Board), Department of Consumer Affairs, under the authority of the following laws. All section
6 references are to the Business and Professions Code unless otherwise indicated.

7 STATUTORY PROVISIONS

8 6. Section 2750 of the Business and Professions Code (Code) provides, in
9 pertinent part, that the Board may discipline any licensee, including a licensee holding a
10 temporary or an inactive license, for any reason provided in Article 3 (commencing with section
11 2750) of the Nursing Practice Act.

12 7. Section 2764 of the Code provides, in pertinent part, that the expiration of
13 a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding
14 against the licensee or to render a decision imposing discipline on the license. Under section
15 2811(b) of the Code, the Board may renew an expired license at any time within eight years after
16 the expiration.

17 8. Section 2761 of the Code states:

18 "The board may take disciplinary action against a certified or licensed nurse or
19 deny an application for a certificate or license for any of the following:

20 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

21 "(1) Incompetence, or gross negligence in carrying out usual certified or licensed
22 nursing functions.

23 ...

24 9. Section 2764 of the Code provides, in pertinent part, that the expiration of
25 a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding
26 against the licensee or to render a decision imposing discipline on the license.

27 10. Section 2811(b) of the Code provides, in pertinent part, that the Board may
28 renew an expired license at any time within eight years after the expiration.

1 11. Section 2725 of the Code states:

2 "(a) In amending this section at the 1973-74 session, the Legislature recognizes
3 that nursing is a dynamic field, the practice of which is continually evolving to include more
4 sophisticated patient care activities. It is the intent of the Legislature in amending this section at
5 the 1973-74 session to provide clear legal authority for functions and procedures that have
6 common acceptance and usage. It is the legislative intent also to recognize the existence of
7 overlapping functions between physicians and registered nurses and to permit additional sharing
8 of functions within organized health care systems that provide for collaboration between
9 physicians and registered nurses. These organized health care systems include, but are not
10 limited to, health facilities licensed pursuant to Chapter 2 (commencing with Section 1250) of
11 Division 2 of the Health and Safety Code, clinics, home health agencies, physicians' offices, and
12 public or community health services.

13 "(b) The practice of nursing within the meaning of this chapter [the Nursing
14 Practice Act] means those functions, including basic health care, that help people cope with
15 difficulties in daily living that are associated with their actual or potential health or illness
16 problems or the treatment thereof, and that require a substantial amount of scientific knowledge
17 or technical skill, including all of the following:

18 (1) Direct and indirect patient care services that ensure the safety, comfort,
19 personal hygiene, and protection of patients; and the performance of disease prevention and
20 restorative measures.

21 (2) Direct and indirect patient care services, including, but not limited to, the
22 administration of medications and therapeutic agents, necessary to implement a treatment,
23 disease prevention, or rehabilitative regimen ordered by and within the scope of licensure of a
24 physician, dentist, podiatrist, or clinical psychologist, as defined by Section 1316.5 of the Health
25 and Safety Code.

26 (3) The performance of skin tests, immunization techniques, and the withdrawal
27 of human blood from veins and arteries.

28 (4) Observation of signs and symptoms of illness, reactions to treatment, general

1 behavior, or general physical condition, and (A) determination of whether the signs, symptoms,
2 reactions, behavior, or general appearance exhibit abnormal characteristics, and (B)
3 implementation, based on observed abnormalities, of appropriate reporting, or referral, or
4 standardized procedures, or changes in treatment regimen in accordance with standardized
5 procedures, or the initiation of emergency procedures.

6 "(c) 'Standardized procedures,' as used in this section, means either of the
7 following:

8 (1) Policies and protocols developed by a health facility licensed pursuant to
9 Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code through
10 collaboration among administrators and health professionals including physicians and nurses.

11 (2) Policies and protocols developed through collaboration among administrators
12 and health professionals, including physicians and nurses, by an organized health care system
13 which is not a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of
14 Division 2 of the Health and Safety Code.

15 "The policies and protocols shall be subject to any guidelines for standardized
16 procedures that the Division of Licensing of the Medical Board of California and the Board of
17 Registered Nursing may jointly promulgate. If promulgated, the guidelines shall be
18 administered by the Board of Registered Nursing.

19 "(d) Nothing in this section shall be construed to require approval of standardized
20 procedures by the Division of Licensing of the Medical Board of California, or by the Board of
21 Registered Nursing."

22 "(e) No state agency other than the board may define or interpret the practice of
23 nursing for those licensed pursuant to the provisions of the chapter, or develop standardized
24 procedures or protocols pursuant to this chapter, unless so authorized by this chapter, or
25 specifically required under state or federal statute. "State agency" includes every state office,
26 officer, department, division, bureau, board, authority, and commission."

27 12. California Code of Regulations, title 16, section 1442, states:

28 "As used in Section 2761 of the code, 'gross negligence' includes an extreme

1 departure from the standard of care which, under similar circumstances, would have ordinarily
2 been exercised by a competent registered nurse. Such an extreme departure means the repeated
3 failure to provide nursing care as required or failure to provide care or to exercise ordinary
4 precaution in a single situation which the nurse knew, or should have known, could have
5 jeopardized the client's health or life."

6 13. California Code of Regulations, title 16, section 1443, states:

7 "As used in Section 2761 of the code, 'incompetence' means the lack of possession
8 of or the failure to exercise that degree of learning, skill, care and experience ordinarily possessed
9 and exercised by a competent registered nurse as described in Section 1443.5."

10 14. California Code of Regulations, title 16, section 1443.5 states:

11 "A registered nurse shall be considered to be competent when he/she consistently
12 demonstrates the ability to transfer scientific knowledge from social, biological and physical
13 sciences in applying the nursing process, as follows:

14 "(1) Formulates a nursing diagnosis through observation of the client's physical
15 condition and behavior, and through interpretation of information obtained from the client and
16 others, including the health team.

17 "(2) Formulates a care plan, in collaboration with the client, which ensures that
18 direct and indirect nursing care services provide for the client's safety, comfort, hygiene, and
19 protection, and for disease prevention and restorative measures.

20 "(3) Performs skills essential to the kind of nursing action to be taken, explains
21 the health treatment to the client and family and teaches the client and family how to care for the
22 client's health needs.

23 "(4) Delegates tasks to subordinates based on the legal scopes of practice of the
24 subordinates and on the preparation and capability needed in the tasks to be delegated, and
25 effectively supervises nursing care being given by subordinates.

26 "(5) Evaluates the effectiveness of the care plan through observation of the
27 client's physical condition and behavior, signs and symptoms of illness, and reactions to
28 treatment and through communication with the client and health team members, and modifies the

1 plan as needed.

2 "(6) Acts as the client's advocate, as circumstances require, by initiating action to
3 improve health care or to change decisions or activities which are against the interests or wishes
4 of the client, and by giving the client the opportunity to make informed decisions about health
5 care before it is provided."

6 15. Section 125.3 of the Code provides, in pertinent part, that the Board may
7 request the administrative law judge to direct a licentiate found to have committed a violation or
8 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
9 and enforcement of the case.

10 PATIENT L.V. - LABOR & DELIVERY

11 16. On October 21, 2001, at approximately 2030 hours, patient C.P., age 17,
12 was admitted to St. Luke's Hospital Labor and Delivery Suite in San Francisco, California, in
13 active labor with her first child, after having experienced a normal pregnancy. Respondent was
14 notified of C.P.'s arrival at 2055. Respondent first saw the patient at 2130. At 2220,
15 Respondent noted that C.P. was 2-3 centimeters dilated, and that the fetal heart rate was in the
16 130's to 150's with reflex late decelerations, positive long term variability, and positive
17 accelerations.¹

18 17. At 2330, the fetal heart rate was noted to be 150's to 170's, with positive
19 long term variability, and reflex late decelerations. The treatment plan was to continue
20 antibiotics, continue close observation of fetal heart rate, and pitocin augmentation.

21 18. At 2345, Respondent documented fetal heart rate decelerations to 80 beats
22 per minute, with deceleration and recovery over four minutes. The fetal heart rate was described
23 as baseline 150's to 160's with positive long term variability. C.P. was administered oxygen 10
24 liters by mask, maternal position was changed, and the fetal scalp was stimulated. At that time,
25 the plan was to continue close observation of the fetal heart rate. At 0001 on October 22, 2001, a

26
27 1. Late decelerations (temporary drops in the fetal heart rate that take place after the peak
28 of uterine contractions) can be indicative of fetal distress. Variability and accelerations are
reassuring signs of fetal health.

1 fetal scalp electrode was placed (to more accurately monitor the fetal heart rate). At 0005, the
2 attending physician and the operating room team were called for an emergency C-section. The
3 fetus was delivered, but was neurologically compromised due to lack of oxygen from fetal
4 distress. At no time did Respondent inquire as to whether anesthesia was readily available. As a
5 result of her failure to alert the anesthetist on call to the possibility of an emergency C-section,
6 C.P. had to undergo local anesthesia during the C-section.

7
8 CAUSE FOR DISCIPLINE

9 (Gross Negligence and Incompetence)

10 19. Respondent has subjected her license to discipline under Business and
11 Professions Code section 2761(a)(1) on the grounds of unprofessional conduct in that on October
12 21 and 22, 2001, while employed as a licensed registered nurse at St. Luke's Hospital in San
13 Francisco, California, she was guilty of gross negligence and/or incompetence, as defined in Title
14 16, California Code of Regulations sections 1442, 1443 and 1443.5, when she assumed the care
15 of patient C.P., in the following respects:

16 a. Respondent was grossly negligent when she failed to adequately
17 monitor the fetal heart rate in the presence of repetitive late decelerations.

18 b. Respondent was grossly negligent when she failed to apply a fetal
19 scalp electrode once she diagnosed repetitive late decelerations.

20 b. Respondent was incompetent when she failed to adequately
21 monitor the fetal heart rate in the presence of repetitive late decelerations.

22 b. Respondent was incompetent when she failed to apply a fetal scalp
23 electrode once she diagnosed repetitive late decelerations.

24 e. Respondent was incompetent when she failed to ascertain whether
25 anesthesia was readily available.

26
27 PRAYER

28 WHEREFORE, Complainant requests that a hearing be held on the matters herein

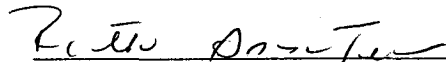
1 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

2 1. Revoking or suspending Registered Nurse License Number 561983, Nurse
3 Midwife Certificate No. 1420, and Nurse Midwife Furnisher Certificate No. 1420, issued to Lisa
4 Miyako Noguchi.

5 2. Ordering Lisa Miyako Noguchi to pay the Board of Registered Nursing the
6 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
7 Professions Code section 125.3;

8 3. Taking such other and further action as deemed necessary and proper.

9
10 DATED: 7/14/08

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12 
13 RUTH ANN TERRY, M.P.H., R.N.
14 Executive Officer
15 Board of Registered Nursing
16 Department of Consumer Affairs
17 State of California
18 Complainant

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